MONTANA LEGISLATIVE HISTORY

Chapter 333 19 25

Bill H 646 S _____ Original bill & history ___C

H. Committee on Judiciary			S. Committee on State Administration		
Hearing Date(s)	Feb 19	✓C	Hearing Date(s)	Mar 13	✓C
	Feb 19	✓C		Mar 19	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Feb 19	✓C		Mar 19	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

House BILL NO. 646

INTRODUCED BY Mr. Keith Holmes

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT ONE MEMBER OF THE BOARD OF PARDONS SERVE FULL-TIME AND THAT THE RESPONSIBILITY FOR FIELD SERVICES STAFF FOR PROBATION AND PAROLE BE TRANSFERRED TO THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 82A-804, 95-3203 THROUGH 95-3206, R.C.M. 1947; RENUMBERING AND AMENDING SECTIONS 95-3210, 95-3213 AND 95-3220, R.C.M. 1947; AND REPEALING SECTIONS 95-3207, 95-3211, 95-3212, AND 95-3219, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82A-804, R.C.M. 1947, is amended to read as follows:

"82A-804. Board of pardons -- composition -- allocation -- designation. (1) There is a board of pardons.

(2) The board consists of three (3) members.

(3) At least one of the board members shall serve full-time as determined by the governor.

~~(3)~~ (4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108 (2) (d) does not apply.

~~(4)~~ (5) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 2. Section 95-3203, R.C.M. 1947, is amended to read as follows:

"95-3203. Act, how cited. This act shall be known and may be cited as the "~~Probation,~~ Parole and Executive Clemency Act"."

Section 3. Section 95-3204, R.C.M. 1947, is amended to read as follows:

"95-3204. Board of pardons. (1) The board of pardons ~~shall--administer--the~~ is responsible for executive clemency~~,-probation~~ and parole ~~system,~~ as provided in this chapter. ~~and---shall--endeavor--to--secure--the--effective application-and-improvement-of-that-system-and-the-laws-upon which-it-is-based.~~

(2) The board shall meet at least once each month at the state prison.

(3) The principal office of the board shall be in Deer Lodge."

Section 4. Section 95-3205, R.C.M. 1947, is amended to read as follows:

"95-3205. Definitions. Unless the context requires otherwise, in this ~~act~~ chapter:

(1) "Board" means the board of pardons provided for in section 82A-804.

INTRODUCED BILL

(2) ~~"Probation" means the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.~~ "Department" means the department of institutions provided for in Title 82A, chapter 8.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to ~~its~~ supervision of the department of institutions.

(4) "Executive clemency" refers to the powers of the governor as provided by section 12 of article VI of the constitution of Montana."

Section 5. Section 95-3206, R.C.M. 1947, is amended to read as follows:

"95-3206. Orders, records, report. Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance of terms of this act. The department of institutions shall keep a record of the board's acts and decisions available to the public. However, all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by ~~any member or employee of~~

~~the board~~ the department, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may in its discretion, when the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney."

Section 6. There is a new R.C.M. section numbered 95-3301 that reads as follows:

95-3301. Definitions. As used in this chapter, unless the context requires otherwise: (1) "Board" means the board of pardons provided for in section 82A-804.

(2) "Department" means the department of institutions provided for in Title 82A, chapter 8.

(3) "Probation" means the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department.

Section 7. There is a new R.C.M. section numbered

95-3302 that reads as follows:

95-3302. Powers of the department. The department may: (1) appoint probation and parole officers and other employees necessary to administer this chapter;

(2) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

Section 8. Section 95-3210, R.C.M. 1947, is renumbered 95-3303, and is amended to read as follows:

"~~95-3210~~ 95-3303. Duties of the ~~administrator~~ department. ~~The--administrator-is-the-executive-officer-of the--board.---He~~ The department is responsible for any investigation and supervision requested by the board or the courts. The ~~administrator,--subject--to--the--direction--and supervision--of-the~~ department ~~under-section-82A-108,~~ shall:

(1) ~~Subject-to-the-approval-of-the-board,-divide~~ Divide the state into districts, and assign probation and parole officers to serve in these districts and courts;

(2) Obtain any necessary office quarters for the staff in each district;

(3) Assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) Direct the work of the probation and parole

officers and other employees ~~assigned-to-him~~;

(5) Formulate methods of investigation, supervision, recordkeeping, and reports;

(6) Conduct training courses for the staff;

(7) Co-operate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;

(8) Administer the interstate compact for the supervision of parolees and probationers."

Section 9. There is a new R.C.M. section numbered 95-3304 that reads as follows:

95-3304. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct, and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension

of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

Section 10. There is a new R.C.M. section numbered 95-3306 that reads as follows:

95-3306. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting

to community life, inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

Section 11. There is a new R.C.M. section numbered 95-3307 that reads as follows:

95-3307. Parole services. To assist parolees the department may, in addition to other services, provide the following: (1) employment counseling, job placement, and assistance in residential placement;

(2) family and individual counseling and treatment placement;

(3) financial counseling;

(4) vocational and educational counseling and placement; and

(5) referral services to any other state or local agencies.

The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

Section 12. Section 95-3220, R.C.M. 1947, is renumbered 95-3308, and is amended to read as follows:

"~~95-3220~~ 95-3308. Return of parole violator. (1) At any time during release on parole or conditional release the ~~board~~ department may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the ~~board~~ department. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner may, if circumstances

warrant, be incarcerated in such institution.

(2) After the arrest of said prisoner, a hearing shall be held within a reasonable time, unless such hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over this hearing. This hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of this hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(3) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. Based on the information given to him, the hearings officer must determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as specified in section 95-3217.

If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer

 HB 646

shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release and this report shall be accompanied by the findings of the hearings officer. Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

(4) A prisoner for whose return a warrant has been issued ~~by--the--board~~ shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board."

Section 13. There is a new R.C.M. section numbered 95-3309 that reads as follows:

95-3309. Cases of juveniles excluded. The provisions of this chapter shall not apply to probation in the juvenile court or to parole from state institutions for juveniles.

Section 14. Section 95-3213, R.C.M. 1947, is

renumbered 95-3305.

Section 15. Sections 95-3207, 95-3211, 95-3212, and 5-3219, R.C.M. 1947, are repealed.

-End-

JUDICIARY COMMITTEE

February 17, 1975

The thirty fourth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Monday, February 17, 1975 at 7:00 PM. Representative Herb Huennekens, Chairman, presided. All members were present except Representative Seifert, absent.

Bills scheduled for hearing this evening were House Bills Nos. 646, 637, 364, 437 and House Joint Resolution No. 47 and they were heard in this order.

HOUSE BILL NO. 646 Representative Pat McKittrick, District #42, is chief sponsor of this measure. He stated that essentially the bill provides for one member of the board of pardons to serve full time. He turned testimony over to Representative Polly Holmes then.

Pat Melby, an attorney in the Governor's office, stated he drafted this bill for Representative Holmes as a personal favor. The governor has taken no official position on the bill but endorses and supports the concept of the bill. The Governor's office has been working very closely with the Department of Institutions. Upon the appointment of a new director they intend to go ahead with the concept and integrate all functions into one.

The bill names various correctional facilities, also the function of supervisors and probation officers, it is very consistent with the concept of correctional system.

Proponent Curt Chisolm, Department of Institutions research analyst, stated that as far as their position is concerned there is nothing in the bill the department couldn't live with, they support the concepts contained therein. The concepts are comparable with recent goals and standards, studies of the American Bar Association. A number of other states have recently adopted this type of concept. It has a quasi judicial function now under this bill.

Proponent John Thomas, with the after care bureau, stated an important facet of the bill is that now there will be a full time parole board member. The parole board has to deal with forty or more people during one of their sessions which last a day. They cannot adequately protect with such a large job, they could actually use three full time board members.

No further proponents. No opponents. Representative Polly Holmes, in closing, stated this clarifies to her there are no opponents. Representative McKittrick, in closing, stated that all has been said, the need is there.

In answer to question by Representative Lory, Representative McKittrick replied the continuity is important, they

would be reviewing applications as they come up for parole. The full time board member would have supervision over the entire picture.

Representative Baeth questioned if one full time parole board member wouldn't he make all the decisions to which Representative McKittrick answered they could promulgate rules and decisions but they don't want to write this into the law. He hopes the other two won't just rubber stamp. They could use three full time board members.

In answer to question by Representative Scully, he was advised the parole board is responsible for executive clemency, parole and whether it can be revoked. The jurisdiction of this particular person is under the jurisdiction of the department of institutions.

Representative Moore stated this bill doesn't authorize a staff. There are some other bills that hinge or affect this bill. This is reason to provide advisory committee that would set policy for the entire corrections division, qualifications for choosing parole board members.

Representative Baeth questioned if there was a fiscal note to which Pat Melby replied that a field staff now exists, this bill would simply transfer them from the board of pardons to the department of institutions. The full time board member could require a fiscal note.

Hearing was then closed on House Bill No. 646.

HOUSE BILL NO. 637 Representative Polly Holmes, District #67, is chief sponsor of this act to amend the prisoner furlough program. She stated she could guarantee there has never been a bill with so much conferring. She provided each committee member with the latest version of the bill because changes had been made from the original bill drafted. She stated that in this bill they refer to the department which means division of corrections. In the event the division of corrections doesn't become a reality it doesn't matter because the parole board will be in the division of corrections department. The bill sets up the procedure for administering the parole board. The parolee may apply at any time except if the warden objects now, the present system allows for graft and not so gentle persuasion. No policy presently written into the law.

She feels the law should make it very clear who is eligible to apply to the parole board. She feels long prison stays don't make people better. Coercion and growth can't happen together. She feels this bill provides us with another provision besides putting people in prison and leaving them there. This new bill adds an element of individual supervisor. It provides for a three way contract which the prisoner can enter into.

HOUSE BILL NO. 646 Representative Meloy moved DO PASS. Discussion followed regarding fiscal implications and it was decided to request a fiscal note on this bill.

Following brief discussion committee elected to hold this bill for further thought and will direct Diana Dowling to work on this bill.

HOUSE BILL NO. 437 Representative Meloy moved to amend page 4, line 7 by striking "relating" and inserting "reducing". Motion to amend carried.

Representative Kimble moved DO PASS AS AMENDED.

In reply to comments by Representative Yardley, Representative Meloy explained that the rules committee did split on the question of whether this violated the constitution. The Democrats said no, the Republicans said yes. Discussion of joint rules followed.

Representative Halvorson stated this goes on the ballot two years from now. Credit is getting tighter. Feels two years is a long time.

Motion DO PASS AS AMENDED failed on a tie vote of 7 to 7.

Diana Dowling pointed out to the committee that the constitution talks about people accepting or rejecting an act of this legislature. She pointed out you've got to pass this act and then put it on the referendum to people to vote on the percent.

A motion to adjourn was made and carried. Meeting adjourned at 10:10 PM.

Herb Huennekens

REPRESENTATIVE HERB HUENNEKENS
CHAIRMAN

HH:pb

NAME Jan Brown Bill No. HB 646 HB 637

ADDRESS 912 Peosta, Helena Date 2/7/75

WHOM DO YOU REPRESENT? Mt. Assn. of Churches (Mt. Religious Legislative Coalition)

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Montana Religious Legislative Coalition of the Montana Association of Churches has not yet had a task force studying Montana's Criminal justice system, and therefore has not formulated a specific policy statement on Corrections. However, MAC is concerned with social justice and human rights and would support the concepts of House Bills 646 and 637

running for public service commissioner with the new division of districts. This bill would give the people of the state an equal opportunity to have a voice in the Supreme Court justices. Chairman Huennekens stated that with this bill it will be cheaper to run for supreme court justice, there will be a feeling of responsibility, a chance of recognition of performance.

Representative Meloy moved to amend page 1, line 16 by striking "elected" and inserting "appointed". Motion to amend carried.

Motion DO PASS AS AMENDED carried by a roll call vote.

HOUSE BILL NO. 421 Representative Yardley moved to table this bill. He stated the only difference between this bill and the Senate bill is this bill has a felony provision. Representative Moore explained the difference between the two bills. Senator Greely incorporated a new section into his bill for an employee coerced, its a felony and has a penalty, and explained other differences.

Motion to table bill carried.

HOUSE BILL NO. 646 Committee secretary read a letter from staff attorney Diana Dowling summarizing effects of this piece of legislation. (see exhibit) Representative Meloy stated this bill is moving the parole board into the department of institutions.

Representative Scully moved to defer action. He stated we have a $400,000 study that will terminate in July. He agrees we have to have some movement out of there. Doesn't think we can stake it out of there, have got to have something substantial. Motion to defer carried with Representative Meloy voting no.

HOUSE BILL NO. 437 Representative Scully moved DO NOT PASS. Committee vote resulted in a tie the other day. Motion carried by a roll call vote.

HEARINGS ON BILLS

HOUSE BILL NO. 348 Representative Betty Babcock, District #30, is chief sponsor of this measure designed to discourage shoplifting. It is based on Idaho and Nevada laws recently passed. She described the shoplifter, their activities and how to get away with things including ticket switching. Told why they steal and who steals. For some shoplifting has become a way of life.

Proponent Jim Sewell, representing the Montana Food and Midi Mart Food Stores stated he will propose three amendments.

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DIRECTOR, LEGAL SERVICES
AND RESEARCH
MRS. ROBERTA MOODY
SUPERVISOR, ALTER SYSTEM

February 19, 1975

TO: Representative Herb Huennekens

FROM: Diana Dowling, Director Legal Services

RE: House Bill No. 646

This bill transfers probation and parole field staff services from Board of Pardons to Department of Institutions so that the only thing Board members will be doing is determining who gets paroled and who does not.

The Board now hears about 45 cases a month (at their once-a-month meeting). National Criminal Justice Standards suggests that NO more than 20 parole applications be considered at one time.

House Bill No. 646 also repeals the section (95-3207) providing for appointment of an administrator for the Board and in Section 8 of the bill, page 5, the administrator's duties are given to the department.

The amendment I suggest then is, a provision for a full time executive officer and a provision that the Board meet whenever there are twenty cases to consider. This would alleviate some of the concern about ~~each~~ lack of individual attention.

The only other alternative would be three full time Board members. If there were three, I am certain they would divide the workload so that there would always be one member more knowledgeable in certain cases and I (Personally) fail to understand how (after taking away all field service duties) there is enough to keep three Board members busy full time when now they meet only once a month.

The Committee should also be aware of the $440,000 Corrections Task Force study which will be looking at the entire picture very comprehensively and making recommendations - study supposed to be finished in July of this year-so this legislation may be premature.

The other needed amendment changes section #'s in title 82A which sets forth duties of Department (under reorganization).

DD/gjs

Diana

See you late tonite

PROPOSED AMENDMENTS TO HB 646

1. Amend the title, page 1, lines 4 and 5.
Strike: "ONE MEMBER OF THE BOARD OF PARDONS SERVE FULL-TIME AND THAT"

2. Amend the title, page 1, line 8.
Strike: "82A-804"
Insert: "82A-801.1"

3. Amend the bill, page 1, Section 1.
Strike: Section 1 in its entirety.
Insert: 'Section 1. Section 82A-801.1, R.C.M. 1947, is amended to read as follows:
"82A-801.1. Functions of department. The department and its units are responsible for the administration of laws relating to institutions, including, but not limited to, laws pertaining to:
(1) District youth guidance homes (Title 10, chapter 11);
(2) Warm Springs state hospital (Title 38, chapter 1);
(3) Examination and commitment of persons mentally deranged (Title 38, chapter 2);
(4) Patient transfers (Title 38, chapter 3);
(5) Examination of patients and voluntary admissions (Title 38, chapter 4);
(6) Convalescent leave of patients (Title 38, chapter 5);
(7) Voluntary sterilizations (Title 69, chapter 64);
(8) Juvenile facilities (Title 80, chapter 14);
(9) Institutional industries (Title 80, chapter 15);
(10) Payments for care of patients (Title 80, chapter 16);
(11) Galen state hospital (Title 80, chapter 17);
(12) Montana veterans' home (Title 80, chapter 18);
(13) State prison (Title 80, chapter 19);
(14) Montana childrens center (Title 80, chapter 21);
(15) Mountain View School and Pine Hills school (Title 80, chapter 22);
(16) Boulder river school and hospital (Title 80, chapter 23);
(17) Mental hygiene services and mental health centers (Title 80, chapter 24);
(18) Montana center for the aged (Title 80, chapter 25);
(19) Mental retardation programs (Title 80, chapter 26);
(20) Probation, parole, and clemency ~~(Title 91, chapter 98)~~ (Title 95, chapters 32 and 33)."'

4. Amend the bill, page 2, Section 3, following line 17.
Insert: "The board may not consider more than twenty (20) parole applications on any one meeting day and shall meet as often as necessary to consider all eligible persons each month."

5. Amend the bill, page 2, Section 3, following line 19.
Insert: "(4) The board shall hire a full time executive officer who is responsible for any investigation or other function requested by the board."

remarks. He stated that he was very much surprised that when the opponents talked about the problems, it was obvious they hadn't gone further into legal research. There are laws to take care of the situations they mentioned. According to the language in this bill, only upon the discretion of the director of the department and on a permissive basis may wardens be vested with police powers. Neither will the bill take away any of the powers; simply that two other members are there to decide policy and hiring. Rep. Scully feels that the fact the Attorney General is not spending much time on administration is exactly the reason he should not have this function. Representative Scully hoped the committee would consider the text of the bill in making their deliberations.

CONSIDERATION OF HOUSE BILL NO. 646: An act to provide qualifications for the Board of Pardons and place the responsibility for field services staff for probation and parole in the Department of Institutions.

Representative McKittrick, sponsor of the bill, explained that it is quite simple, but the import of the bill is of significance, especially to the policy that Montana adresses itself to in the area of corrections. It sets out the qualification that at least one of the members of the board shall have a master's degree in either sociology, criminology, psychology, cultural anthropology, political science, social work, guidance and counseling, or related discipline, and at least one of whom shall have particular knowledge of indian culture and problems. This was amended into the bill by the House. Rep. McKittrick also proposed some further amendments (see Exhibit E attached) which would broaden the requirement concerning Indian culture. The reason for these amendments is because the board has the authority and responsibility to handle the policies affecting those who are on parole, and to make it more meaningful as far as the public is concerned. The board is also required to meet twice a month, rather than only once a month as previously done. The functions of the board are delineated in the bill also.

Mr. Pat Melby, attorney in the Office of Budget and Program Planning, testified in support of this bill. He stated that, prior to the Legislature, the governor's office worked very closely with the Department of Institutions to create a corrections division which will contain all the functions relating to this under one administrator, as soon as one is appointed. The administrative duties would be removed from the board and transferred to the department of institutions Corrections Division. This would remove potential conflict of interest each time a parole and probation officer issues a warrant for a parolee who has been in violation.

Mr. Curt Chisholm, Department of Institutions, stated that he concurs with the concept and intent of House Bill 646, and encourages its passage. He feels it is without a doubt one of the more important pieces of correctional legislation, and will have probably the greatest impact on our system. It is

conceptually compatible with the department's objectives.

Mr. Hank Burgess, a member of the Board of Pardons, testified in support of House Bill 646, stating that he was representing himself. He stated that it contains several provisions that are pretty badly needed: 1) it will provide at least one alternative for developing a more unified system; and 2) it will alleviate the board from policy and direction-setting responsibilities and hearing cases at their monthly meetings. It will therefore allow them to devote full attention to parole and clemency matters. Meeting twice a month will help cut their work load at each meeting and is very good.

Mr. John G. Thomas, from the juvenile sector of the Department of Institutions, also stated that this bill is badly needed. Although it does not speak to it specifically, Mr. Thomas feels it could help unify the juvenile and adult services into one office for secretarial help, and other such items. That would result in a significant economical savings to the state, and more effective services to the juvenile as well as the adult.

Representative Polly Holmes stated that this bill is the basic foundation stone for the remainder package of corrections bills that are aimed at preventing and reducing crime and recidivism. A copy of her testimony is attached (see Exhibit F).

CONSIDERATION OF HOUSE BILL NO. 570: An act relating to the powers of the State Fire Marshall.

Mr. William Pentilla, State Fire Marshall, stated that this is a housekeeping bill which merely repeals a section requiring the State Fire Marshall to hold a hearing. This would cut down duplication of the Administrative Procedures Act. He stated that they held a hearing one time that cost them $250, and no one showed up.

DISPOSITION OF BILLS:

HOUSE BILL NO. 570: Senator Story made a motion that House Bill 570 BE CONCURRED IN. Motion carried unanimously.

HOUSE BILL NO. 565: Senator Murphy made a motion that House Bill 565 BE CONCURRED IN. Motion carried unanimously.

HOUSE BILL NO. 568: Senator Jergeson made a motion that House Bill 568 BE CONCURRED IN. Motion carried.

HOUSE BILL NO. 598: Senator Roskie made a motion that House Bill 598 BE CONCURRED IN. Motion carried unanimously.

HOUSE BILL NO. 512: Senator Roskie made a motion that House Bill 512 be amended as follows:

Exhibit E

ROUGH DRAFT

Amend House Bill No. 646, third reading copy, as follows:

1. Amend page 1, section 1, subsection (2), line 20.
Following: "have"
Strike: the remainder of the subsection in its entirety.
Insert: "particular knowledge of Indian culture and problems. Members of the board shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements."

2. Amend page 2, section 1, line 2.
Strike: "(3) (4)"
Insert: "3"
Renumber following subsection.

3. Amend page 2, section 1, present subsection (5), line 7.
Following: "82A-112"
Insert: "except board members shall be compensated as provided by legislative appropriation.

4. Amend page 3, section 4, line 6.
Following: "department"
Insert: "Related work experience in the areas listed in section 1, subsection 2 of this act may be substituted for educational requirements at the rate of one (1) year of experience for nine (9) months formal education, ifapproved by the department.

5. Amend page 12, following line 15.
Insert: a new section 16 and renumber the subsequent section.
"Section 16. The provisions of sections 82A-116 through 82A-122 are applicable to this act."

Exhibit F

DUTIES OF BOARD OF PARDONS

REP. POLLY HOLMES

ADMINISTER POLICY FOR FIELD SERVICES (IF 646 PASSES, THIS WILL BE OUT OF THEIR HANDS.)

PAROLING AUTHORITY

GRANT DISCHARGES FROM PAROLES--REGULAR PAROLE PLUS PAROLING FROM LOCAL INSTITUTIONS

HOLD CLEMENCY HEARINGS

RECOMMEND TO THE GOVERNOR ON COMMUTATION SENTENCES

GRANT PARDONS, RESTORATIONS AND REMISSIONS

ACT AS AN ADVISORY BOARD ON PARDONS

HEAR FURLOUGH APPLICATIONS

IF 637 PASSES, SUPERVISE AN EXPANDED PRISONER FURLOUGH PROGRAM

* * * * *

NOW HEARING 45-50 CASES A MONTH--MEETING MONTHLY

25 OF THOSE ARE PAROLEES

THE NATIONAL STANDARDS RECOMMEND HALF THAT CASE LOAD. THEY ALSO RECOMMEND THAT INSTITUTIONS AND FIELD STAFF BE UNDER COMMON ADMINISTRATIVE DIRECTION.

PAROLE BOARD MEMBERS EACH GET $25 A DAY PLUS TRAVEL. (THAT'S $75 A MONTH, PLUS TRAVEL.) NOT VERY DARN MUCH. WITH THIS BILL, IT WOULD COST $300 A MONTH AND TRAVEL.

THIS BILL WILL TRANSFER THE FIELD SERVICES OUT OF THE HANDS OF THE PAROLE BOARD (WHICH IS A QUASI-JUDICIAL BODY--NOT AN ADMINISTRATIVE BODY)--AND SUGGESTS THAT THEY MEET TWICE A MONTH INSTEAD OF MONTHLY.

MUCH OF OUR RECIDIVISM IN THE PAST HAS BEEN DUE TO FIVE THINGS:

1. WE'VE TRIED TO MIX PUNISHMENT WITH REHABILITATION, WHICH DOESN'T WORK.

2. WE'VE MIXED TROUBLED YOUNG PEOPLE WITH HARDENED CRIMINALS, MAKING VERY LITTLE DISTINCTION BETWEEN THEM.

3. WE'VE LEFT PEOPLE IN PRISON LONG AFTER ISOLATION CEASES TO DO THEM ANY GOOD.

4. WE'VE GIVEN THEM VERY LITTLE QUALIFIED AND MEANINGFUL TRAINING WITH AN EYE TO PREPARING THEM FOR REACHABLE GOALS.

5. WE'VE CLOSED DOORS TO 17 PROFESSIONS SO THAT THEY CAN'T GET JOBS IN THEIR CHOSEN FIELDS; AND THEREFORE, ARE MORE LIKELY TO RETURN TO CRIME.

PH:NLM

2. Amend page 1, section 1, line 14.
Following: "by-products"
Strike: "from the prison ranch"
Insert: "best utilized in a rendering plant"

The motion carried unanimously. Senator Murphy then made a motion that House Bill 561 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

HOUSE BILL NO. 603: Senator Story made a motion that House Bill 603 BE NOT CONCURRED IN. The motion carried unanimously. (See information memo attached as Exhibit C.)

HOUSE BILL NO. 184: Senator Roskie made a motion that House Bill 184 be amended as follows:

1. Amend page 2, section 1, lines 1 through 2.
Following: "ACTION."
Strike: "ANY INTERESTED PARTY MAY SEEK JUDICIAL REVIEW OF THE BOARD'S ACTION."

The motion carried. Senator Roskie then made a motion that House Bill 184 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

HOUSE BILL NO. 203: Senator Murphy made a motion that House Bill 203 BE CONCURRED IN. The motion carried unanimously.

HOUSE BILL NO. 290: Senator Story made a motion that House Bill 290 BE CONCURRED IN. The motion carried unsnimoualy.

HOUSE BILL NO. 378: Senator Murphy made a motion that House Bill 378 BE CONCURRED IN. The motion carried unanimously.

HOUSE BILL NO. 337: Senator Devine made a motion that House Bill 337 BE CONCURRED IN. The motion carried unanimously.

HOUSE BILL NO. 485: Senator Story made a motion that House Bill 485 BE CONCURRED IN. Motion carried unanimously.

HOUSE BILL NO. 699: Senator Greely made a motion that the amendments (attached herewith as Exhibit D) to House Bill 699 be adopted. The motion carried unanimously.

Senator Jergeson then made a motion that House Bill No. 699 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

HOUSE BILL NO. 646: Senator Rosell made a motion that the committee adopt the amendments to House Bill 646 (attached herewith as Exhibit E). The motion carried unanimously.

Senator Seibel then made a motion that House Bill 646 BE CONCURRED IN AS AMENDED. The motion carried.

HOUSE BILL NO. 342: Senator Greely made a motion that the committee adopt the following amendments to House Bill 342:

Exhibit E

ROUGH DRAFT

Amend House Bill No. 646, third reading copy, as follows:

1. Amend page 1, section 1, ~~subsection (2)~~, line 20.
Following: "have"
Strike: the remainder of the subsection in its entirety.
Insert: "particular knowledge of Indian culture and problems. Members of the board shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements."

2. Amend page 2, section 1, line 2.
Strike: ~~"(3)~~ (4)"
Insert: "3"
Renumber following subsection.

3. Amend page 2, section 1, ~~present subsection (5)~~, line 7.
Following: "82A-112"
Insert: "except board members shall be compensated as provided by legislative appropriation.

4. Amend page 3, section 4, line 6.
Following: "department"
Insert: "Related work experience in the areas listed in section 1, subsection 2 of this act may be substituted for educational requirements at the rate of one (1) year of experience for nine (9) months formal education, ifapproved by the department.

5. Amend page 12, following line 15.
~~Insert: a new~~ section 16 and renumber the subsequent section.
"Section 16. The provisions of sections 82A-116 through 82A-122 are applicable to this act."

SENATE COMMITTEE on STATE ADMINISTRATION

Date 3-17-75 House Bill No. 646 Time 9:15 a.m.

NAME	YES	NO
GREELY, Mike - Chairman	X	
MURPHY, Terry - Vice Chairman	X	
DEVINE, John W.		X
JERGESON, Greg	X	
SEIBEL, Ann	X	
ROSELL, Antoinette Fraser	X	
ROSKIE, George F.	X	
STORY, Peter	X	

Mary Anne Fisher
Secretary

Mike Greely
Chairman

Motion: By Seibel that House Bill No. 646 BE CONCURRED IN AS AMENDED.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE on STATE ADMINISTRATION

Date 3-17-75 House Bill No. 646 Time 9:130 a.m.

NAME	YES	NO
GREELY, Mike - Chairman	X	
MURPHY, Terry - Vice Chairman	X	
DEVINE, John W.	X	
JERGESON, Greg	X	
SEIBEL, Ann	X	
ROSELL, Antoinette Fraser	X	
ROSKIE, George F.	X	
STORY, Peter	X	

Mary Anne Fisher
Secretary

Mike Greely
Chairman

Motion: By Rosell that House Bill 646 be amended as follows: (see attached)

(include enough information on motion--put with yellow copy of committee report.)

HOUSE BILL NO. 646

INTRODUCED BY MCKITTRICK, HOLMES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE ~~THAT--ONE MEMBER--OF~~ QUALIFICATIONS FOR THE BOARD OF PARDONS ~~SERVE FULL-TIME-AND-THAT~~ AND PLACE THE RESPONSIBILITY FOR FIELD SERVICES STAFF FOR PROBATION AND PAROLE ~~BE-TRANSFERRED-TO~~ IN THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 82A-804, 95-3203 THROUGH 95-3206, R.C.M. 1947; RENUMBERING AND AMENDING SECTIONS 95-3210, 95-3213 AND 95-3220, R.C.M. 1947; AND REPEALING SECTIONS 95-3207, 95-3211, 95-3212, AND 95-3219, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82A-804, R.C.M. 1947, is amended to read as follows:

"82A-804. Board of pardons -- composition -- allocation -- designation. (1) There is a board of pardons.

(2) The board consists of three (3) members AT LEAST ONE OF WHOM SHALL HAVE ~~A--MASTER'S--DEGREE--IN--EITHER SOCIOLOGY,-CRIMINOLOGY,-PSYCHOLOGY,--CULTURAL--ANTHROPOLOGY, POLITICAL--SCIENCE,-SOCIAL-WORK,-GUIDANCE-AND-COUNSELING,-OR RELATED-DISCIPLINE,-AND-AT-LEAST--ONE--OF--WHOM--SHALL--HAVE PARTICULAR---KNOWLEDGE---OF---INDIAN--CULTURE--AND--PROBLEMS~~ PARTICULAR KNOWLEDGE OF INDIAN CULTURE AND PROBLEMS. MEMBERS OF THE BOARD SHALL POSSESS ACADEMIC TRAINING WHICH HAS QUALIFIED THEM FOR PROFESSIONAL PRACTICE IN A FIELD SUCH AS CRIMINOLOGY, EDUCATION, PSYCHIATRY, PSYCHOLOGY, LAW, SOCIAL WORK, SOCIOLOGY, OR GUIDANCE AND COUNSELING. RELATED WORK EXPERIENCE IN THE AREAS LISTED MAY BE SUBSTITUTED FOR THESE EDUCATIONAL REQUIREMENTS.

~~(3)--At-least-one-of--the--board--members--shall--serve full-time-as--determined-by-the-governor.~~

~~(3)~~~~(4)~~(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108 (2) (d) does not apply.

~~(4)~~~~(5)~~(4) The board is designated as a quasi-judicial board for purposes of section 82A-112, EXCEPT BOARD MEMBERS SHALL BE COMPENSATED AS PROVIDED BY LEGISLATIVE APPROPRIATION."

Section 2. Section 95-3203, R.C.M. 1947, is amended to read as follows:

"95-3203. Act, how cited. This act shall be known and may be cited as the "~~Probation,~~ Parole and Executive Clemency Act"."

Section 3. Section 95-3204, R.C.M. 1947, is amended to read as follows:

"95-3204. Board of pardons. (1) The board of pardons ~~shall--administer-the~~ is responsible for executive clemency,

REFERENCE BILL
Corrected 4/2/75

probation and parole ~~system~~ as provided in this chapter. ~~and--shall--endeavor-to-secure-the-effective-application-and improvement-of-that-system-and-the-laws--upon--which--it--is based.~~

(2) The board shall meet at least ~~once~~ TWICE each month at the state prison.

(3) The principal office of the board shall be in Deer Lodge."

SECTION 4. THERE IS A NEW R.C.M. SECTION THAT READS AS FOLLOWS:

Qualifications of probation and parole officers. Probation and parole officers shall have at least a college degree and shall have received at least some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. RELATED WORK EXPERIENCE IN THE AREAS LISTED IN SECTION 1, SUBSECTION (2) OF THIS ACT MAY BE SUBSTITUTED FOR EDUCATIONAL REQUIREMENTS AT THE RATE OF ONE (1) YEAR OF EXPERIENCE FOR NINE (9) MONTHS FORMAL EDUCATION, IF APPROVED BY THE DEPARTMENT. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

Section 5. Section 95-3205, R.C.M. 1947, is amended to read as follows:

"95-3205. Definitions. Unless the context requires otherwise, in this ~~act~~ chapter:

(1) "Board" means the board of pardons provided for in section 82A-804.

(2) ~~"Probation"-means-the-release-by-the-court-without imprisonment-except-as--otherwise--provided--by--law,--of--a defendant--found--guilty--of--a--crime-upon-verdict-or-plea, subject-to-conditions-imposed-by-the-court--and--subject--to the--supervision--of--the-board-upon-direction-of-the-court,~~ "Department" means the department of institutions provided for in Title 82A, chapter 8.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to ~~its~~ supervision of the department of institutions.

(4) "Executive clemency" refers to the powers of the governor as provided by section 12 of article VI of the constitution of Montana."

Section 6. Section 95-3206, R.C.M. 1947, is amended to read as follows:

"95-3206. Orders, records, report. Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance of terms of this act. The department of institutions shall keep a record of the board's acts and decisions available to the public. However, all social records, including the pre-sentence report, the

pre-parole report and the supervision history obtained in the discharge of official duty by ~~any member or employee of the board~~ the department, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may in its discretion, when the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney."

Section 7. There is a new R.C.M. section numbered 95-3301 that reads as follows:

95-3301. Definitions. As used in this chapter, unless the context requires otherwise: (1) "Board" means the board of pardons provided for in section 82A-804.

(2) "Department" means the department of institutions provided for in Title 82A, chapter 8.

(3) "Probation" means the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the

board and subject to supervision of the department.

Section 8. There is a new R.C.M. section numbered 95-3302 that reads as follows:

95-3302. Powers of the department. The department may: (1) appoint probation and parole officers and other employees necessary to administer this chapter;

(2) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

Section 9. Section 95-3210, R.C.M. 1947, is renumbered 95-3303, and is amended to read as follows:

"~~95-3210~~ 95-3303. Duties of the ~~administrator~~ department. ~~The administrator is the executive officer of the board.~~ ~~He~~ The department is responsible for any investigation and supervision requested by the board or the courts. The ~~administrator, subject to the direction and supervision of the~~ department ~~under section 82A-108,~~ shall:

(1) ~~Subject to the approval of the board, divide~~ Divide the state into districts, and assign probation and parole officers to serve in these districts and courts;

(2) Obtain any necessary office quarters for the staff in each district;

(3) Assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and

disbursement of money;

(4) Direct the work of the probation and parole officers and other employees ~~assigned to him~~;

(5) Formulate methods of investigation, supervision, recordkeeping, and reports;

(6) Conduct training courses for the staff;

(7) Co-operate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;

(8) Administer the interstate compact for the supervision of parolees and probationers."

Section 10. There is a new R.C.M. section numbered 95-3304 that reads as follows:

95-3304. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct, and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

Section 11. There is a new R.C.M. section numbered 95-3306 that reads as follows:

95-3306. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

Section 12. There is a new R.C.M. section numbered 95-3307 that reads as follows:

95-3307. Parole services. To assist parolees the department may, in addition to other services, provide the following: (1) employment counseling, job placement, and assistance in residential placement;

(2) family and individual counseling and treatment placement;

(3) financial counseling;

(4) vocational and educational counseling and placement; and

(5) referral services to any other state or local agencies.

The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

Section 13. Section 95-3220, R.C.M. 1947, is renumbered 95-3308, and is amended to read as follows:

"~~95-3220~~ 95-3308. Return of parole violator. (1) At any time during release on parole or conditional release the ~~board~~ department may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the ~~board~~ department. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of

violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner may, if circumstances warrant, be incarcerated in such institution.

(2) After the arrest of said prisoner, a hearing shall be held within a reasonable time, unless such hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over this hearing. This hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of this hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(3) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. Based on the information given to him, the hearings officer must determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as specified in section 95-3217.

If the hearings officer determines that there is

probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release and this report shall be accompanied by the findings of the hearings officer. Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

(4) A prisoner for whose return a warrant has been issued ~~by--the--board~~ shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board."

Section 14. There is a new R.C.M. section numbered 95-3309 that reads as follows:

95-3309. Cases of juveniles excluded. The provisions of this chapter shall not apply to probation in the juvenile

court or to parole from state institutions for juveniles.

Section 15. Section 95-3213, R.C.M. 1947, is renumbered 95-3305.

SECTION 16. THE PROVISIONS OF SECTIONS 82A-116 THROUGH 82A-122 ARE APPLICABLE TO THIS ACT.

Section 17. Sections 95-3207, 95-3211, 95-3212, and 95-3219, R.C.M. 1947, are repealed.

-End-